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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,675	10/24/2003	Nick Stefano	322	9613

7590

03/23/2006

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EXAMINER

AVERY, BRIDGET D

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/693,675	Applicant(s) STEFANO, NICK	
	Examiner Bridget Avery	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9 and 16-22 is/are pending in the application.
- 4a) Of the above claim(s) 8 and 10-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-7,9 and 16-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amendment filed by applicant on January 9, 2006 is acknowledged and has been entered.
2. An action on the merits of claims 1-7, 9, and 16-22 follows.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-7 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 1 recites the apparatus "an amusement vehicle ...comprising stabilizing means" and then recites the method step of using the stabilizing means "which during use is only in contact with the ground surface temporarily during initial mounting and dismounting of said vehicle by a rider" and "by leaning and pulling rearwardly on the handlebar assembly perform and maintain a wheelie maneuver."

A single claim which claims both an apparatus and the method steps of using the apparatus is indefinite under 35 U.S.C. 112, second paragraph.

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Such claims should also be rejected under 35 U.S.C. 101 based on the theory that the claim is directed to neither a "process" nor a "machine," but rather embraces or overlaps two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. *Id.* at 1551.

5. Claims 1-7 and 9 are also rejected under 35 U.S.C. 112, first paragraph.

Specifically, since the claimed invention is not supported by either a specific asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-6, 9, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller (US Patent 3,567,242).

Miller, as best understood, teaches an amusement vehicle similar to applicant's including: a support platform (2); a handlebar mounted upon and extending upwardly from the support platform (2); three ground contacting wheels (6a, 6b, 6c) mounted in a triangular pattern with a single wheel positioned to the rear and two paired side by side. Miller teaches a platform that is at least two feet in length. The wheel base of the vehicle is from one to two and a half feet in length based on a platform that is between

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two and three feet. Note, Miller in column 3, lines 47-50 teaches "the size and location of the wheels beneath the platform can be varied, depending upon the design and size considerations...." Re the handlebar, applicant's attention is directed to column 3, lines 40-42. Re the ability to perform wheelies, applicant's attention is directed to column 3, lines 1-5 and line 30-31. Re the position of the wheels, applicant's attention is directed to column 1, lines 43-45.

7. Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Murdock (US Patent 1,056,357).

Murdock, as best understood, teaches an amusement device similar to applicant's including a support platform (1); a handlebar assembly (12); and at least two ground contacting wheels (5, 10) where one ground contacting wheel including a primary traveling means (10) and the other ground contacting wheel including a stabilizing means (5).

8. Claims 16 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Remacle (US Patent 1,467,453).

Remacle teaches a platform wheeled rider support vehicle including: a structural support base (10); three wheels (18) arranged in a triangular pattern with two forward wheels and one effective rear wheel; a short wheel base dimension between the two forward wheels and the rear wheel; and a single handle (15) extending upwardly from the structural support base adapted to be grasped by a rider, the handle (15) positioned

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so that it is over the wheel base of the vehicle, as clearly shown in Figure 2. The single handle (15) extends upwardly from the structural support base (10) inside the confines of a clearly depicted triangle having it's apices directly over the center of the three wheels (18).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 7 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller ('242).

Miller teaches the features described above.

Miller lacks the exact teaching of a wheel base from one and a quarter to one and three quarters feet in length and a wheel base from one foot to two and a half feet.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to modify the wheel base of Miller to be one and a quarter to one and three quarters in length or to be one foot to two and a half feet, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

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10. Claim 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murdock ('357).

Murdock teaches the features described above.

Murdock lacks the exact teaching of a wheel base from one and a quarter to one and three quarters feet in length and a wheel base from one foot to two and a half feet.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to modify the wheel base of Miller to be one and a quarter to one and three quarters in length or to be one foot to two and a half feet, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

11. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ramacle ('453) in view of Mickels (US Patent 2,825,575).

Remacle teaches the features described above.

Remacle lacks the exact teaching of a handle with two handle graspable means.

Mickels teaches a handle with two handle graspable means extending from it adjacent the top.

Based on the teachings of Mickels, it would have been obvious at the time the invention was made, to modify the handle of Remacle to include to handle graspable means extending from it adjacent the top to facilitate control of the platform, as taught in column 2, lines 56-60.

Response to Arguments

12. Applicant's arguments filed January 9, 2006 have been fully considered but they are not persuasive. Contrary to applicant's remarks, the amusement device of Miller is capable of performing a wheelie maneuver. To perform a wheelie maneuver, a rider would only need to pull one or both handles (8a, 8b) and cause one or two wheels to lift from the rolling surface. Miller clearly anticipates use of the amusement device to perform "many unusual and complex feats," as stated in column 3, lines 1-5. Miller, in column 3, lines 30-31, states "With practice, the operator can turn, pivot and stop quickly and with precision." The pivot maneuver described by Miller is the same as applicant's "wheelie maneuver".

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Campeau shows a wheel board undulating coaster.

Schinke shows a skate board structure.

Bastman shows a scooter car.

Fravel shows a child's play cart.

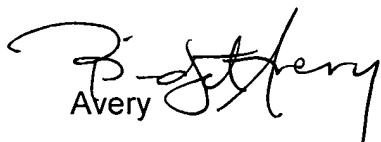
14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

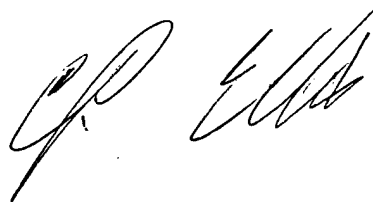
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication should be directed to Bridget Avery at telephone number 571-272-6691.



Avery

March 17, 2006



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